

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

UNITED STATES OF AMERICA)
v.) CRIM. CASE NO. 2:18-cr-352-ECM
TIMOTHY DEAN PETTIWAY) (WO)

MEMORANDUM OPINION and ORDER

On July 29, 2019 the Court received a forensic report of Kale Kirkland, Ph.D., a licensed psychologist. (Doc. 131). In the report, Dr. Kirkland outlined his finding that Defendant Timothy Dean Pettiway “exhibited an adequate and comprehensive ability to discuss his case, [and] . . . has an adequate factual and rational understanding of the legal proceedings against him.” (*Id.* at 5). Finally, Dr. Kirkland opined that Pettiway “can consult with his attorney with no difficulty.” (*Id.*) It was Dr. Kirkland’s opinion “that this case proceed” to sentencing. (*Id.*)

After being given the opportunity to comment on Dr. Kirkland’s evaluation, Mr. Pettiway advised the Court that “Dr. Kirkland has appropriately assessed [his] mental competency and based on the same has no objection” to his report. (Doc. 135). Neither party has presented any information indicating that the Court should not rely on Dr. Kirkland’s opinion that the Defendant is competent, which is unchallenged by the Defendant. For these reasons, and because neither party has requested a competency hearing, the Court finds that such a hearing is not required for the Court to make a determination as to Defendant Pettiway’s competency to be sentenced. *See United States v. Johns*, 390 F. App’x 963, 969 (11th Cir. 2010) (“Due process requires that an adequate

hearing be held on competency when the evidence raises a bona fide doubt as to defendant's competency to stand trial") (quoting *Fallada v. Dugger*, 819 F.2d 1564, 1568 (11th Cir. 1987) (internal citations omitted)); *United States v. Williams*, 262 F. App'x 165, 173 (11th Cir. 2008) ("A district court may rule on [the issue of defendant's competency] without [the] benefit of a full dress hearing as long as the court has no 'bona fide doubt' as to the competence of the defendant.") (quoting *United States v. Nickels*, 324 F.3d 1250, 1252 (11th Cir. 2003)).

After consideration of all of the evidence, the Court credits the conclusions of Dr. Kirkland and finds that there is no bona fide doubt that Defendant Timothy Dean Pettiway is competent to be sentenced. On May 21, 2019, in open court, the Court continued the Defendant's sentencing pending completion of the competency evaluation. Also pending before the Court is the Defendant's motion to expedite sentencing (doc. 129). For the reasons as stated, and for good cause, it is

ORDERED that the motion to expedite sentencing (doc. 129) is GRANTED and a sentencing hearing is set for **August 21, 2019 at 10:00 a.m.** in Courtroom 2A, United States Courthouse Complex, One Church Street, Montgomery, Alabama. All deadlines are adjusted accordingly.

The Clerk of the Court is DIRECTED to provide a court reporter. The United States Marshal is DIRECTED to secure the Defendant's presence at the hearing.

Done this the 12th day of August, 2019.

/s/Emily C. Marks
EMILY C. MARKS
CHIEF UNITED STATES DISTRICT JUDGE